Legal 289-28-04

.

I Companie

8. C. PUBLIC SERVICE COMMISSION

E C E I V E

SEP 2 9 2004

E C E I V- E

UTILITIES DEPARTMENT

BEFORE

HE PUBLIC SERVICE COMMISSION OF?

SOUTH CAROLINA

Docket No. 2000-366-A

171581

In Re:	Application of Chem-Nuclear Systems,)	
	LLC, a subsidiary of Duratek, Inc., for)	
	Adjustment in the Levels of Allowable)	
	Costs and for Identification of Allowable)	
	Costs)	

APPLICATION
(for Fiscal Year 2004-2005)

Pursuant to the provisions of S.C. Code Ann. § 48-46-40(B)(4) (Supp. 2003), Chem-Nuclear Systems, LLC, a subsidiary of Duratek, Inc., ("Chem-Nuclear" or "the Company") submits this Application for adjustment in the levels of certain allowable costs and for the identification of certain allowable costs for the operation of its regional low-level radioactive waste disposal facility located in the vicinity of Barnwell, South Carolina. In support of the relief, which it requests by its Application in this proceeding, Chem-Nuclear would respectfully show unto this honorable Commission:

- 1. On June 6, 2000, the Governor of the State of South Carolina signed the Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act ("the Act"). The Act is codified as S.C. Code Ann. §§ 48-46-10, *et seq.* (1976), as amended.
- 2. Section 48-46-40(B)(1) of the Act authorizes and directs the Commission "to identify allowable costs for operating a regional low-level radioactive waste disposal facility in South Carolina." Section 48-46-30(1) defines "allowable costs" as "costs to a disposal site operator of operating a regional disposal facility." Under that definition, such costs "are limited to costs determined by standard accounting practices and regulatory findings to be associated with facility operations."

- 3. Section 48-46-40(B)(3) provides that "allowable costs" expressly include the costs of certain specifically identified activities necessary in the operation of a low-level radidactive waste disposal facility. That Section also provides that "allowable costs" include "any other costs directly associated with disposal operations determined by [the Commission] to be allowable."
- 4. Chem-Nuclear operates a regional low-level radioactive waste disposal facility ("the Facility") in Barnwell County, South Carolina. Consequently, the Commission has the authority to identify the "allowable costs" for the Company's operation of the Facility.
- 5. The Facility is located on a tract of land consisting of approximately 235 acres which the State of South Carolina owns and which the Company leases from the South Carolina Budget and Control Board ("the Board"). The 235 acre site includes areas for various operations, including completed disposal trenches, potential trench areas, ancillary facilities, water management areas and buffer zone areas.
- Radioactive Material License 097 ("License 097") by which the South Carolina Department of Health and Environmental Control ("DHEC") has authorized receipt, storage and disposal of low-level radioactive waste at the Facility. License 097 contains numerous technical conditions and specifications for management of waste at the Facility. The Company submitted an application to DHEC on April 28, 2000, for renewal of License 097. The DHEC staff has recommended approval of the renewal of License 097 and the matter is currently pending review before the South Carolina Administrative Law Court. In addition to the requirements of License 097, the Facility is subject to DHEC's regulations in 24A S.C. Code Reg. 61-63 (Title A) (Supp. 2003). DHEC's regulations are similar to the provisions of "Licensing Requirements for Land

Disposal of Radioactive Wastes," which the United States Nuclear Regulatory Commission ("NRC") originally promulgated in 10 CFR Part 61, and which DHEC has adopted for the most part and which DHEC enforces through its own regulations under an agreement with the NRC.

- 7. On July 23, 2004, the Commission issued its Order No. 2004-349 in SCPSC Docket No. 2000-366-A. By that Order, the Commission identified certain categories of allowable costs and identified levels of allowable costs in those categories. Order No. 2004-349 approved certain rates for variable allowable costs and identified the sum of \$5,266,823 for total fixed allowable costs for the 12 months ending June 30, 2004. The Order also approved irregular costs of \$1,781,870, as allowable costs.
- 8. S.C. Code Ann. § 48-46-40(B)(4) (Supp. 2003) provides that an operator of a low level radioactive waste disposal site may apply for adjustments in the levels of allowable costs which the Commission has identified for the previous fiscal year and for identification of costs which the Commission has not previously identified as allowable costs. Upon approval of such application, Section 48-46-40(B)(4) requires the Commission to authorize the site operator to adjust its allowable costs for the current fiscal year to compensate the site operator for revenues lost during the previous fiscal year.
- 9. For the purposes of this Application and its Exhibits, the Company has used the cost categories which the Commission approved in Order No. 2004-349, which were based on the recommendations of the parties to the Collaborative Review of the Company's Operations and Efficiency Plan ("OEP").
- 10. During the Company's recently concluded 2003-2004 fiscal year (*i.e.*, the twelve months ending June 30, 2004), the Company's actual allowable costs in those categories which the Commission identified in Order No. 2004-349 for fixed costs were \$5,423,468. By this

Application, the Company requests the Commission to approve adjustments in the levels of certain of its previously identified fixed allowable costs in the amount of \$156,645 for the 2003-2004 fiscal year (*i.e.*, the twelve months ending June 30, 2004) to permit the Company to be compensated for the difference between the levels of those allowable fixed costs identified in Order No. 2004-349 and the actual costs which the Company incurred in that category, as authorized by Section 48-46-40(B)(4).

- 11. With respect to the allowable costs which Order No. 2004-349 characterized as variable costs, which are dependent upon volumes of waste received, the Company incurred actual costs in the category of variable material (vault) costs in the 2003-2004 fiscal year in excess of the costs, identified in Order No. 2004-349. Using the variable cost rates identified by the Commission for categories of waste and using the volumes of waste received in the 2003-2004 fiscal year, the Company requests an adjustment of \$85,984.26 for the twelve months ending June 30, 2004 to permit the Company to be compensated for the differences between the levels of the allowable variable material (vault) costs identified in Order No. 2004-349 and the actual costs which the Company incurred in that category, as authorized by Section 48-46-40(B)(4).
- 12. With respect to those allowable costs which Order No. 2004-349 characterized as irregular costs, the Company actually incurred total irregular costs for the 2003-2004 fiscal year of \$2,744,034. The irregular costs which the Company actually experienced exceeded the level of total allowable irregular costs identified in Order No. 2004-349 as \$1,781,870. Consequently, the Company requests that the Commission identify \$2,744,034 as allowable irregular costs for Fiscal Year 2003-2004.

- 13. The Company has attached to this Application three exhibits pertaining to the adjustment and identification of the three categories of its allowable costs for its disposal operations.
- 14. Exhibit "A" to the Application describes in detail the Company's proposed adjustments for the recovery of its actually incurred costs for fixed, variable and irregular costs to reflect the differences between the level of allowable costs identified in Order No. 2004-349 and the Company's actual experience in the 2003-2004 fiscal year. Exhibit A also provides the rates for variable costs, which reflect the Company's actual experience in Fiscal Year 2003-2004.
- 15. Exhibit "B" describes the actual irregular costs which the Company incurred in the 2003-2004 fiscal year, organized by project number.
- 16. Exhibit "C" depicts the total fixed costs, irregular costs and variable cost rates that the Company proposes for identification and approval for Fiscal Year 2004-2005.
- 17. For Fiscal Year 2004-2005, the Company is requesting identification as allowable costs a total of \$5,809,175 as allowable fixed costs, as depicted in Exhibit C. Exhibit C also identifies variable material cost rates and variable waste dependent labor rates for Fiscal Year 2004-2005. Irregular costs for Fiscal Year 2004-2005 that are known and measurable at the time of this Application are \$1,643,665, as specified in Exhibit C.

The costs and amounts in Exhibits A and C are consistent with the description of allowable costs in Section 48-46-40(B)(3), and they have been determined by standard accounting practices and are consistent with the recommendations of the Collaborative Review of the OEP as the Commission approved in Order No. 2004-349.

WHEREFORE, Chem-Nuclear Systems, LLC, a subsidiary of Duratek, Inc., respectfully prays unto this honorable Commission:

- 1. To review the Company's Application and issue its Order, under S.C. Code Ann. § 48-46-40(B)(4) (Supp. 2003), adjusting the levels of allowable costs as depicted in Exhibit "A" and "B" for Fiscal Year 2003-2004, and identifying as "allowable costs" those costs depicted in Exhibit "C" for Fiscal Year 2004-2005.
 - 2. For such other and further relief as is just and proper.

Respectfully submitted,

Robert T. Bockman McNair Law Firm, P.A. Post Office Box 11390 Columbia, South Carolina 29211 (803) 799-9800

Attorney for Chem-Nuclear Systems, LLC

September 27, 2004

Columbia, South Carolina

EXHIBIT A: FISCAL YEAR 2003-2004 COSTS

Fixed Costs: Adjustment Proposed

Fixed costs were incurred in FY 2003-2004 in the general categories of labor-related costs, non-labor costs, costs allocated from corporate functions and fixed costs not subject to the 29% statutory margin. The following table compares the actual costs incurred to the costs identified as allowable in Commission Order No 2004-349:

	Commission Order No. 2004-349	Actual Costs Incurred in FY 2003-2004	Adjustment Proposed
Labor and Fringe	\$2,656,177	\$2,758,135	
Non-Labor	\$1,299,646	\$1,147,781	
Corporate Allocation (G&A)	\$686,000	\$892,551	
Fixed Costs not subject to 29% Margin	\$625,000	\$625,000	
Total Fixed Cost	\$5,266,823	\$5,423,468	\$156,645

Variable Costs: Adjustment Proposed

Variable Material (Vault) Costs

The following table illustrates the vault costs that would be calculated using the variable cost rates identified in Commission Order No 2004-349 and the volumes of waste received in each respective category.

	Volume Buried (cubic feet)	Variable Cost Rate in Order 2004-349	Calculated Cost
Class A waste	24,921.24	\$22.83	\$568,951.86
Class B waste	12,493.31	\$23.78	\$297,085.44
Class C waste	8,850.64	\$23.57	\$208,609.58
Slit Trench waste	1,325.00	\$91.04	\$120,628.00
Reactor Pressure Vessels	10,337.00	N/A	
Other Large Components (in vaults as an irregular cost)	1,588.54	N/A	
Total Vault Cost			\$1,195,274.89

The total cost incurred for routine disposal vaults during FY 2003-2004 was \$1,281,259.15. Therefore, we request an adjustment of \$85,984.26 increase in this category of cost.

Variable Labor Costs

The variable labor rates identified in Commission Order No. 2004-349 predicted variable labor costs within about 15% of actual variable labor costs. No adjustment is requested in this category.

Irregular Costs:

The following table summarizes the irregular costs incurred in FY 2003-2004. Exhibit B provides additional descriptions of each of these irregular projects and costs. The total costs incurred in FY 2003-2004 as irregular costs were \$2,744,034 compared to the amount identified, as of the hearing, in Commission Order No. 2004-349 of \$1,781,870. We therefore request the Commission identify \$2,744,034 as allowable irregular costs for FY 2003-2004.

	Basis	Actual	Actual	Actual
Irregular Cost Item	For	FY 03-04	FY 03-04	Total Cost
	Order Amount	Labor	Non-Labor	FY 03-04
	(Blume Testimony Exhibit AA)			
Big Rock RPV	\$70,114.00	\$2,465.17	\$60,409.24	\$62,874.41
CT Yankee RPV	\$352,321.00	\$8,177.41	\$345,220.04	\$353,397.45
Other large components: CY RHX, three RCPs, Navy RSMAs(6) and leadscrews(6)		\$11,503.18	\$88,398.33	\$99,901.51
West Swale Construction	\$142,765.00	\$47,128.71	\$108,396.49	\$155,525.20
Trench 96	\$113,375.00	\$4,977.78	\$70,464.22	\$75,442.00
Trench 86 Mods	\$65,104.00	\$1,740.75	\$46,056.00	\$47,796.75
Various Trenches: Trench 96, Trench 86 mods, Trench 94 mods, Slit Trench 22, Slit Trench 23, Slit Trench 24, Slit Trench 22, start Trench 97		\$27,365.40	\$44,216.16	\$71,581.56
Water and Sewer	\$136,786.00			÷
Depreciation	\$86,836.00		\$94,967.21	\$94,967.21
Insurance	\$725,205.00		\$941,301.46	\$941,301.46
Decontamination and Corrective Actions		\$10,426.81	\$10,047.04	\$20,473.85
Engineering Drawings		\$38,632.80	\$18,659.65	\$57,292.95
Miscellaneous Irregular Projects		\$14,266.56	\$11,393.87	\$25,736.60
License Renewal and Appeal costs		\$24,246.88	\$258.02	\$24,504.90
B&CB support (irregular)		\$8,691.90		\$8,691.90
Other Irregular costs (PT&C, DAW processing, QA consultant)			\$79,845.59	\$79,845.59
Additional Irregular Non-labor Costs			\$496,589.63	\$496,589.63
Irregular Costs Subject to 29% Margin	\$1,691,720.00			\$2,615,922.47
Retention Compensation	\$89,364.00	\$83,541.84	-\$	\$83,541.84
Legal Support (license Appeal)			\$26,656.38	\$26,656.38
Legal Support (EEO)			\$17,913.28	\$17,913.28
Irregular Costs not subject to 29%	\$89,364.00			\$128,111,50

EXHIBIT B: FISCAL YEAR 2003-2004 IRREGULAR COSTS ORGANIZED BY PROJECT

188000.8001

Insurance Premiums

188000.8002

Insurance Premiums (Corporate)

(Non-labor \$941,301.46)

Insurance premiums paid for various insurance policies including automobile, property, liability, and nuclear liability.

188000.8005 188000.8006 **Decontamination and Corrective Actions**

Slit Trench Corrective Action

(Labor \$10,426.81 and Non-labor \$10,047.04)

Includes costs related to decontamination efforts and corrective actions that were required as a result of damaged waste packages. Included in these costs for FY 2003-2004 were costs to decontaminate and subsequently fill with grout an intermodal container that had been used to transport an unusual large component (contaminated glove box). The intermodal became contaminated due to the loss of integrity of the disposal package. Includes costs related to actions associated with a slit trench offloaded cask to remove debris that remained in the cask after the liner was offloaded. Also included here are non-routine repairs that were required to the slit trench offload equipment (weld repair of the offload ramp trunion pieces).

188004.8001

Site Engineering & Drawing Updates (Labor \$38,632.80 and Non-labor \$18,659.65)

Labor and contractor costs for site engineering support and preparation and reproduction of site drawings. As agreed to in the Collaborative Review of the OEP, the amount of site engineering and drawing update support may vary from year to year. Therefore, this cost is irregular.

Included in this project number for FY 2003-2004 were three primary endeavors: (1) Update of all environmental monitoring system drawing, (2) DHEC-directed trench backfill evaluation and design alternatives evaluation and (3) vault stability evaluation.

The environmental monitoring drawings project included field and office work by the contracted surveyor as well as lab personnel review and evaluation.

188007.8001

Large Component Disposal

(Labor: \$22,145.76 and Non-labor \$494,027.61)

Non-routine operations. Includes costs associated with disposal of large components or items that involve unusual handling requirements including heavy-haul transporter or placement in custom-designed vaults for stabilization by grouting. Included are waste receipt and inspection, preparations to offload the shipping container or vehicle, placement of the large component in the trench, disposal, survey and transportation vehicle release and closeout. Large components disposed of in FY 2003-2004 were: Connecticut Yankee Reactor Pressure Vessel (CY RPV); Big Rock Pressure Vessel (BRP RPV); three Reactor Coolant Pumps (RCPs); CY Regenerative Heat Exchanger; and several oversized boxes of components (rebound stop magnet assemblies and leadscrew/tie rods) from Norfolk Naval Shipyard. Some of these components required special vaults to accommodate grouting in place.

	LABOR	NON- LABOR
CY RPV	\$8,177.41	\$345,220.04
BRP RPV	\$2,465.17	\$60,409.24
OTHER	\$11,503.18	\$88,398.33

188021.8001

West Swale Construction

(Labor \$47,128.71 and Non-labor \$108,396.49)

Costs for part of the construction of the west swale surface water management feature and associated work. In addition to labor costs, subcontractor costs for part of the construction and materials such as stone, seed and registered land surveyor support are included here.

Miscellaneous Irregular Projects

188019.8001

ERPV Recommendations (Irregular)

(Labor \$4,392.80 and Non-labor \$136.46)

Costs for activities related to implementation of the Environmental Radiological Performance Verification (ERPV) recommendations and reporting those actions to DHEC.

188030.8001

VY Fuel Pins

(Labor \$1,306.45)

Costs for investigations, participation in meetings, and other activities related to fuel pins reported as "missing" by Vermont Yankee. The fuel pins were subsequently located in the Vermont Yankee fuel pool.

952182.8001 Records Retention and Disposition

(Labor \$3,382.88 and Non-labor \$59.55)

Included here are costs for review and disposition of records. In particular, costs for disposition of old records currently retained in the warehouse are included here.

952183.8001 Site Assessments

(Labor \$5,184.43 and Non-labor 11,197.86)

Special projects related to site performance as directed by DHEC or other competent authority. Generally these projects are related to regulatory or technical site performance. In FY 2003-2004, Site Assessment costs pertained to the evaluation leading to the report "Suitability of Southeast Area of Barnwell Site for Disposal." This work was required to allow continued disposal operations in the southeast part of the site, to address questions of site capacity and to address DHEC's characterization of this area as "under review." Work involved Environmental Lab personnel as well as an environmental consultant.

Trenches

188701.8010 Trench 96

(Labor \$4,977.78 and Non-labor \$70,464.22)

Construction and backfill of Trench 96

188022.8001 Trench 86 Modification

(Labor \$1,740.75 and Non-labor \$46,056.00)

Costs for construction of a water management modification to the west end of Trench 86. This project included modifications to the access ramp for Trench 86 as well as excavation of a location for management of surface water from the active trench. These modifications were required to allow use of all designed disposal space in Trench 86.

Various Trench Construction and Backfill Operations (Labor \$27,365.40 and Non-labor \$44,216.16)

188701.8006 188701.8007 188701.8008 188701.8009 188701.8011 188701.8012

Trench construction activities in FY 2003-2004 also included preparation of Trench 94 to receive waste; construction and backfill of Trench 95, part of Trench 97, Slit Trench 22, Slit Trench 23, and Slit Trench 24. The non-labor expense was for outside contractor support for the construction work involved in the various trench construction projects and materials required for trench construction such as drain sand, floor sand, and standpipes.

952188.8001 License Renewal and Appeal

952188.8002 (Labor \$24,246.88 and Non-labor \$258.02)

Non-routine licensing department functions including development and support of the disposal site license renewal application and responding to questions and interrogatories from DHEC. Non-routine activities by licensing department and others related to the appeal process for the DHEC radioactive materials license renewal.

952192.8002 B&CB Support (IRREG)

(Labor \$8,691.90)

Special projects or reports as requested by the SC B&CB staff (e.g., a consolidated spreadsheet of invoice data and radioactive shipment data integrated with collections data)

Other Irregular Costs (Non-labor \$79,845.59)

- a. Project Time and Cost (PT&C) costs for participating in the Commission's proceedings and audits (\$4,374.05) were incurred to support a topic that had been contested for over two years.
- b. As an overall cost savings measure, site-generated Dry Active Waste (DAW) was processed with a box compactor at Duratek's Consolidation and Services Facility (DCSF). The cost for this processing was \$25,534.50. Costs for this processing will be proposed as a fixed cost for FY 2004-2005 and subsequent years.
- c. Based on some personnel qualification issues and subsequent personnel changes, a consultant was brought in to complete a number of internal audits and surveillances to meet regulatory and external audit expectations. The cost for these consultant services was \$49,937.04. This cost is a non-recurring cost.

Depreciation: In FY 2003-2004 depreciation costs were \$94,967.21. Consistent with the agreement reached in the Collaborative Review of the OEP, depreciation is an irregular cost because the amount changes each year as assets are removed or added.

Additional Irregular Costs

- a. Leasing and Equipment Rental: In FY 2003-2004, machinery and equipment rental and lease expenses for items including a 140-ton lattice boom crane and a 40-ton hydraulic crane (to replace older company-owned units that could no longer be economically or safely repaired), and electrical generator, and a forklift were \$226,193.02.
- b. Direct Material and Support: In FY 2003-2004, the company used direct materials such as slings, plastic, protective clothing and subcontractor support for slit trench offload operations and other waste disposal operations. The costs incurred in these categories were \$270,396.61. These costs were not identified as fixed costs or included in the calculation of variable cost rates and are therefore identified as irregular costs for FY 2003-2004. In future years the company recommends part of these direct material costs be considered as fixed costs and other parts form the basis for additional variable material cost rates.

Irregular Costs not subject to the 29% Statutory Margin

952188.8003 Legal Support (License Appeal)

(Non-labor \$26,656.38)

Legal support for the company related to an appeal, filed by others, of the DHEC radioactive materials license renewal.

Legal Support (EEO)

Certain legal costs were incurred to defend the company in an Equal Employment Opportunity (EEO) issue in which the company prevailed. This irregular cost was \$17,913.28.

Retention compensation

The retention compensation plan has been previously approved by the Commission. The cost for this plan in FY 2003-2004 was \$83,541.84.

EXHIBIT C: FISCAL YEAR 2004-2005 COSTS

We propose the following amounts be identified as allowable costs for FY 2004-2005:

FIXED COSTS	
Labor and Fringe	\$2,854,670
Non-Labor	\$1,405,755
Corporate Allocations	\$923,749
(Management Fees / G&A)	
Costs to which the 29% margin is not applied	\$625,000
Total Fixed Costs	\$5,809,175
IRREGULAR COSTS	
Trench Construction	\$60,000
Depreciation	\$110,000
Insurance	\$962,023
Free-flowing sand backfill	\$100,000
Large Components	\$70,000
Costs where the 29% margin is not applied	\$341,641
(License appeal legal support and retention	
compensation)	
Total Irregular Costs	\$1,643,665
VARIABLE COSTS	
Variable Labor Rates based on rates identified in Order 2004-349	
Vault Purchase and Inspection (per vault)	\$82.47
ABC Waste Disposal (per shipment)	\$882.47
Slit Trench Operations (includes laundry costs) (per slit trench offload)	\$5,289.12
Waste Acceptance (per shipment)	\$257.86
Trench Records (per container)	\$51.65
Variable Material Costs (Vault)	
based on actual FY 03-04 rates plus	
supplier cost increase	
Class A Waste (per cubic foot)	\$31.23
Class B Waste (per cubic foot)	\$31.41
Class C Waste (per cubic foot)	\$29.81
Slit Trench Waste (per cubic foot)	\$115.93
Other Variable Material and Support Costs	
ABC Waste Disposal (per shipment)	\$528.90
Slit Trench Operations (per slit trench offload)	\$2,926.13
Vault Purchase and Inspection (per vault)	\$10.81

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Docket No. 2000-366-A

In Re:	Application of Chem-Nuclear Systems,)	
	LLC, a Division of Duratek, Inc., for)	
	Adjustment in the Levels of Allowable)	
	Costs and for Identification of Allowable)	CERTIFICATE
	Costs)	OF SERVICE
)	

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the foregoing Application (for Fiscal Year 2004-2005) upon the following statutory parties by causing said copies to be deposited with the United States Mail, first class postage prepaid and addressed as follows:

The Honorable Frank W. Fusco Executive Director South Carolina Budget and Control Board Post Office Box 12444 Columbia, South Carolina 29211

Hana Pokorna-Williamson, Esqiure Acting Consumer Advocate State of South Carolina Post Office Box 5757 Columbia, South Carolina 29250-5757

The Honorable Max K. Batavia Atlantic Compact Commission 1201 Main Street Suite 826 Columbia, South Carolina 29201. The Honorable Henry Dargan McMaster Attorney General State of South Carolina Post Office Box 11549 Columbia, South Carolina 9211

The Honorable C. Earl Hunter Commissioner SCDHEC 2600 Bull Street Columbia, South Carolina 29201

ElixaBeth A. Blitch, Paralegal McNair Law Firm, P.A. Post Office Box 11390

Columbia, South Carolina 29211

(803) 799-9800

September 27, 2004

Columbia, South Carolina